84-1798

No.

Office - Supreme Court, U.S.
FILED
MAY 16 1985
ALEXANDER L. STEVAS,
CLERK

IN THE

Supreme Court of the United States

APRIL TERM, 1985

FREDERICK L. COLLINS,
Petitioner

v.

ANNDEP STEAMSHIP CORPORATION

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

BERNARD SACKS*
SIMON W. TACHE
Assistant Counsel

Rohm & Haas Building, 2nd Floor
6th & Market Streets
Philadelphia, PA 19106
(215) 925-8200

*Counsel of Record

INSTAPRINT. (215) 977-8999 1801 JFK Blvd. Phila, PA 19103

10 pp

QUESTIONS PRESENTED

1. Whether a shipowner wrongfully withheld the earned wages of a seaman when, after discharging him, the shipowner failed to deliver the wages to the seaman, the United States Consul, or in an escrow, and subsequently deducted a portion of those wages as reimbursement of a non-obligation transportation expense incurred more than four months after the seaman had been discharged and without his consent?

2. Whether a seaman whose earned wages were withheld for more than four months by a shipowner without sufficient cause and without his consent is entitled to delay wages within the meaning of 46 U.S.C. 10313 (g)?

TABLE OF CONTENTS

	Page
DECISIONS BELOW	1
JURISDICTION	1
STATUTORY PROVISIONS INVOLVED	2
STATEMENT	2
REASONS FOR GRANTING THE PETITION	4
CONCLUSION	9
APPENDIX A	9a
APPENDIX B	9b

TABLE OF AUTHORITIES

Cases:	Page
American Foreign S.S. Co. v. Matise, 423 U.S. 150, (1975)	6, 8
Collie v. Fergusson, 281 U.S. 52, 55 (1930	6, 8
Escobar v. SS Washington Trader, 640 F.2d 1063 (9th Cir. 1981)	6
Fourco Glass Co. v. Transmirra Products Corp., 353 U.S. 222 (1957)	8
Griffin v. Oceanic Contractors, Inc., 454 U.S. 1052 (1983)	8
Johnson v. Isbrandtsen Co., 91 F.Supp. 872 (D.C. Pa. 1952), aff'd 190 F.2d 991 (3rd Cir. 1952), aff'd 343 U.S. 779, (1952)	5
Korims v. Sea-Land Services, Inc., 490 F.Supp. 418 (S.A.N.Y. 1980)	6
Muniz v. Hoffman, 422 U.S. 454 (1975)	8
The Arizona v. Anelich, 298 U.S. 110, (1936)	4
The City of Norwich, 279 F. 687 (C.A. 2 N.Y. 1922)	5
The Samuel Little, 221 F. 308 (C.A. 2 N.Y. 1915)	5
Tidewater Oil Co. v. United States, 409 U.S. 151 (1953)	8
Warren v. United States, 340 U.S. 523, (1951)	5

Miscellaneous:	
Lloyd's Register of Shipping (1984)	5
Senate Report No. 96-58 (1983)	8

IN THE

Supreme Court of the United States

APRIL TERM, 1985

No.

FREDERICK L. COLLINS,

Petitioner

v.

ANNDEP STEAMSHIP CORPORATION

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

Sacks & Basch, Esquires, on behalf of Frederick L. Collins, petition for a writ of certiorari to review the judgment of the United States Court of Appeals for the Third Circuit in this case.

DECISIONS BELOW

The judgment order of the Court of Appeals for the Third Circuit (App. A) summarily affirming the decision of the District Court and denying petitioner's motion for a hearing *en banc* (App. B) is unreported.

JURISDICTION

The judgment of the court of appeals was entered on March 4, 1985. A motion for hearing *en banc* was denied on March 21, 1985. The Jurisdiction of this Court is invoked under 28 U.S.C. 1254 (1).

STATUTORY PROVISIONS INVOLVED

46 U.S.C. 10313 (f), provides:

> "At the end of the voyage, the master shall pay each seaman the balance of wages due the seaman within 24 hours after cargo has been discharged or within 4 days after the seaman is discharged, whichever is earlier."

46U.S.C. 10313 (g), provides:

> "When payment is not made as provided under subsection (f) of this section without sufficient cause, the master or owner shall pay to the seaman two days' wages for each day payment is delayed."

46U.S.C. 10318 (f), provides:

> "A deduction from wages of the seaman is permitted only if the deductions appear in the account of the seaman required to be delivered under Section 10310 of this Title, except for matters arising after delivery of the account in which case a supplementary account is required. During a voyage, the master shall report in the official logbook the matters about which the deductions are to be made with the amounts of the deduction. The entries shall be made as the matters occur."

STATEMENT

1. Petitioner, Frederick L. Collins, is a seaman and a member of the United States Merchant Marine.

2. On December 25, 1981, the petitioner, Frederick L. Collins, was duly engaged to serve as a seaman aboard the TT "Williamsburg" in the capacity of General Steward Utility under agreement, to be paid regular monthly wages of $935.40, plus bonus, overtime and found.

3. On March 1, 1982, while the TT "Williamsburg" was in the foreign port of Port Armuelles, Panama, petitioner, Frederick L. Collins, went ashore to shop. The petitioner was arrested by Panamanian authorities at the pier entrance gate as he made his way back to the vessel, resulting in his failure to rejoin his vessel.

4. Petitioner was thereafter officially logged by the Master of the vessel for failure to rejoin the vessel. Petitioner was officially discharged from the TT "Williamsburg" on March 1, 1982 for failure to rejoin the vessel. After petitioner's discharge, the Captain notified a Panamanian agent for the shipowner, the United States Consul and headquarters of the shipowner in New York of petitioner's arrest and detention by Panamanian authorities.

5. Upon the discharge of the petitioner from the vessel on March 1, 1982, the Captain prepared a voucher and mailed it to the respondent. The purpose of the voucher was to indicate the net wages due the petitioner and facilitate the payment of his wages.

6. The Captain did not forward the wages to the Consul when he advised the Consul of the discharge of the petitioner. There was no currency problem since Panama uses American dollars.

7. The respondent had possession of petitioner's permanent address in the United States and could have forwarded the wages due. In fact, when partial payment of the wages was subsequently made more than four months later, it was sent to the same address.

8. On July 14, 1982, the petitioner, Frederick L. Collins, was released from the Panamanian jail in which he was detained. On July 15, 1982, the agent for the respondent shipping company took petitioner to the airport and gave him an airline ticket for San Francisco. The airline ticket was purchased by the respondent. The petitioner was neither told that he would be responsible for his return ticket nor that the price of the ticket was being deducted from his wages. Petitioner's consent was not requested. Panama operates on United States currency and the petitioner could have easily purchased the airline ticket for himself or secured other means of transportation back to the United States given the ocean traffic between the two countries.

9. At the time of petitioner's discharge from the TT "Williamsburg", the respondent shipowner owed $876.00 in wages to petitioner. On July 23, 1982, respondent mailed a check for 227.10 to petitioner's home. This check represented the balance of wages owed to petitioner after respondent unilaterally

claimed $648.90 as a deduction for repatrition expenses.

10. Petitioner brought suit against the respondent shipowner for the unlawful withholding of his wages and for double wages provided as penalty under Section 596 of Title 46 of the United States Code, as partially revised in 1983.

11. Petitioner is claiming from the respondent the amount of $648.90 wrongfully withheld from his pay, along with double wages from March 1, 1982 until December 14, 1982, the date on which petitioner's wages were tendered in full with the U.S. District Court for the Eastern District of Pennsylvania.

12. A non-jury trial on these same issues was held before the Honorable John Fullam on November 14, 1983. At the close of testimony on November 14, 1983, Judge Fullam left the record open for the submission of additional evidence in the form of depositions from the respective parties. On June 21, 1984, Judge Fullam prepared a final Opinion and Order which was filed on June 29,1984. In his Opinion and Order, Judge Fullam found in favor of respondent, stating that respondent acted reasonably with regard to the prompt payment of petitioner's wages and acted properly in charging the petitioner for the cost of his repatriation.

13. On July 12, 1984, an appeal was timely taken by the petitioner to the United States Court of Appeals for the Third Circuit.

14. The Third Circuit, without an opinion, affirmed the decision of the District Court. The Third Circuit further declined Mr. Collins' request for a hearing *en banc*.

REASONS FOR GRANTING THE PETITION

This case presents an issue of great national importance and, in particular, of great concern to the American sailor. This Court has long held that sailors are "wards of admiralty". *The Arizona v. Anelich,* 298 U.S. 110, (1936). Ever since the decision in *The Arizona,* it has been a matter of national policy and of American jurisprudence to treat sailors as a protected class. The rationale for this protective policy is based on the indispensable role sailors play to the national defense. Our sailors provide the unique service as the lifeline of our international communications with

the rest of the shipping world. The role and input of our sailors permeate every facet of our national economy. In 1984, American sailors were involved in the transportation of 29.14 million deadweight tons of goods on American ships alone. This figure placed the United States second to only Japan in the world among the non-flag of convenience countries. See, *Lloyd's Register of Shipping*, 5, (1984).

A seaman's claim for wages is highly favored by the courts. *The City of Norwich*, 279 F. 687 (C.A. 2 N.Y. 1922). In fact, a seaman's claim for wages has been characterized as "a sacred claim." See, *The Samuel Little*, 221 F. 308 (C.A. 2 N.Y. 1915).

This Court left no doubt in its duty to promote the policy of the protection of seamen when it held that whenever possible the Court should construe any ambiguities either in law or in fact in favor of the seaman. Cf. *Warren v. United States*, 340 U.S. 523, (1951) (holding that ambiguities involving maintenance and cure benefits be construed in favor of the ill or injured seaman).

Contrary to the ruling of the Third Circuit and in direct conflict with the decisions of this Court, it is well settled that no deductions from the wages of a seaman are permissable except as expressly provided by statute. See, *Johnson v. Isbrandtsen Co.*, 91 F. Supp. 872 (D.C.Pa. 1950), aff'd 190 F.2d 991 (3rd Cir. 1952), aff'd 343 U.S. 779, (1952). Indeed, in order to leave no ambiguity in its decision, the *Johnson* Court emphasized this point in the following language:

> It thus remains for the courts to determine what are the deductions or set-offs for derelictions of duty that are listed by Congress, rather than to determine which of the deductions or setoffs once known to the general maritime law that Congress has failed to exclude. Congress, in effect, has excluded all of them except those which it has listed affirmatively. *Id.*

Transportation or repatriation expense is not one of the deductions expressly provided for by Congress. Moreover, on March 1, 1982, the respondent was under no obligation to pay for the repatriation expense of the petitioner. The obligation to repatriate the petitioner rested with the Government of the

United States, which did not, through the U.S. Consul or any other competent authority, authorize the respondent to repatriate petitioner four and a half months later.

In order to legally deduct transportation expense from the wages of a seaman discharged in a foreign port, the master must show express consent by the seaman, a duty to pay the repatriation expense on account of the seaman or an emergency circumstance. *American Foreign S.S. Co. v. Matise,* 423 U.S. 150, (1975); *Escobar v. SS Washington Trader,* 640 F.2d 1063 (9th Cir. 1981); *Korims v. Sea-Land Services, Inc.,* 490 F. Supp. 418 (S.A.N.Y. 1980).

The petitioner was discharged in a foreign port. The master or owner of the vessel did not comply with their statutory duty towards the petitioner and failed to tender petitioner's wages to the United States Consul or place the wages in escrow. Additionally, prior to the discharge of petitioner on March 1, 1982, he was a member of the crew of the respondent's vessel for more than a year. The crew list clearly carries the petitioner's permanent address in the United States and respondent had been in possession of this information since December 15, 1981. There was, therefore, no justification for withholding the wages of the petitioner after March 5, 1982. It is this type of conduct that this Court vehemently disapproved of when it said,

> "In an effort to prevent shipowners from unlawfully withholding wages of seamen and thereby unjustly enriching themselves while wrongfully denying the seamen the benefits of their labor, the Congress of the United States enacted into law this statute aimed to protect seamen from the harsh consequences of arbitrary and unscrupulous actions of their employers." *Collie v. Fergusson,* 281 U.S. 52, 55 (1930).

Perhaps more troublsome are the consequences of the Third Circuit's decision on an ingrained national policy to protect seamen. The petitioner is a member of a protected class and the remedies provided by the legislature and as interpreted by this Court extend to him by virtue of his status. The decision of the Third Circuit authorizes a shipowner to arbitrarily withhold the wages of a seaman and to subsequently make unauthorized deductions from these wages in direct contravention of statutory mandates.

The decision reduces the "sufficient cause" requirement of 46 U.S.C. 10313 (g) to "any cause". Such a decision grant shipowners and masters the right to fabricate causes upon which to discharge seamen and withhold their wages*. However, a careful reading of the legislative history of the statute indicates that sufficient cause, as used in this statute, is either direct, indirect or remote. It would clearly be a sad day for the American seaman if every "cause" justifies the withholding of his wages by the master or shipowner.

Sufficient cause is not synonymous with discharge for cause. A seaman may be discharged for cause but that cause may not be necessarily sufficient to withhold his wages. In the case at bar, the alleged cause (reimbursement of transportation expense) for withholding the wages of the petitioner is not only derivative but too remote in time. The deductions were made four and a half months after the petitioner was discharged from the vessel. On March 1, 1982, when petitioner was discharged, there was no dispute regarding his entitlement to his wages. Indeed, his pay voucher clearly indicates that petitioner was entitled to $876.00.

Another unfortunate effect of the Third Circuit's decision is the tacit ruling that the incarceration of an American seaman in a foreign port by itself is sufficient cause to withhold his wages. Such a ruling would have devasting consequences. In the instant case, the petitioner was incarcerated for four and a half months. The next victim may be imprisoned for life or killed in jail in a foreign port. Under the decision of the Third Circuit, a shipowner could withhold and make use of the earned wages of the labor of a seaman indefinitely at his expense and the expense of his family or legal representatives.

Under the commands of 46 U.S.C. 10313 (f), the master shall pay the balance of wages due a seaman within four days after the seaman is discharged. Petitioner was discharged on March 1, 1982 from the respondent's vessel and was, therefore, entitled to

---

*Presently pending in the Third District are cases involving questionable charges against sailors. Certain shipping companies have carried the implication of the Third Circuit failure to hear the Collins case one step further. They manufacture charges against sailors, discharge them and then bring suit against them for misconduct.

his wages on March 5, 1982. In the alternative, where a seaman is discharged and will not be paid his wages until the end of the permissible delay period (four days) under the statute, he is entitled to one-third of his wages. *See,* 46 U.S.C. 10313 (f) (1983). The failure of the shipowner or the master to pay the petitioner within the permissible delay period or to tender one-third of his wages on March 1, 1982, constitutes a violation of this statute and invokes the application of 46 U.S.C. 10313 (g). The decision of the Third Circuit deprives the petitioner of the statutory remedies accorded him by the legislature and as interpreted by this Court. *See, Griffin v. Oceanic Contractors, Inc.,* 454 U.S. 1052 (1983).

The decision of the Third Circuit is deeply flawed and comports with it an unwarranted retreat from the national policy of protecting seamen. This statute has just been refined and revised by the Congress of the United States in August of 1983. If Congress thought a retreat from previous policy was necessary, such a change would have been made. On the contrary, the Drafting Committe stated:

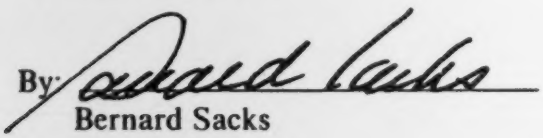
> There is no substantive change of a controversial nature intended to be made by [sic] S. 46. It is sometimes feared that mere changes in terminology and style will result in changes in substance or impair the precedent value of older judicial decisions and alter interpretations . . . In a codification statute, however, the courts uphold the contrary presumption: no change in law is intended unless clearly expressed. *Fourco Glass Co. v. Transmirra Products Corp.,* 353 U.S. 222 (1957); *Tidewater Oil Co. v. United States,* 409 U.S. 151 (1953); *Muniz v. Hoffman,* 422 U.S. 454 (1975); *Senate Report,* No. 98-56, 98th Cong. 1st Sess., 10 (1983).

In view of the conflicts which the decision of the Third Circuit may engender, and considering that national uniformity is a trademark of our national maritime jurisprudence, this case deserves resolution by this Court. For these reasons, and since the Third Circuit provides no guidelines for its decision, and since that decision conflicts and departs from the decision of this Court in *Fergusson, Matise* and *Griffin, supra;* and creates an unjustified erosion of a well-established national maritime policy and precedence, this Court should grant certiorari to hear this case.

CONCLUSION

The Petition for a Writ of Certiorari should be granted.

Respectfully submitted,
SACKS & BASCH

By: 
Bernard Sacks
Simon W. Tache

APPENDICES

9a

NO. 84-1414

FREDERICK L. COLLINS,

Appellant

v.

ANNDEP STEAMSHIP CORPORATION

RECEIVED AND FILED
3-29-85
SALLY MRVOS
Clerk

On Appeal from the United States District Court
for the Eastern District of Pennsylvania
(C. A. No. 82-5284)
(Honorable John P. Fullam)

Submitted Under Third Circuit Rule 12(6)
February 25, 1985

Before: ADAMS, WEIS and WISDOM,* Circuit Judges

JUDGMENT ORDER

After considering the contentions raised by appellant, it is

ADJUDGED AND ORDERED that the judgment of the district court be and is hereby affirmed.

Costs taxed against appellant.

BY THE COURT,

Circuit Judge

ATTEST:

Sally Mrvos, Clerk

DATED: March 4, 1985

* Hon. John Minor Wisdom, United States Court of Appeals for the Fifth Circuit, sitting by designation.

Certified as a true copy and issued in lieu of a formal mandate on March 29, 1985.

Test: M. Elizabeth Ferguson
Chief Deputy Clerk, U.S. Court of Appeals for the Third Circuit

Costs taxed in favor of appellee as follows:

Brief.....$140.00

96

UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

NO. 84-1414

FREDERICK L. COLLINS,

Appellant

v.

ANNDEP STEAMSHIP CORPORATION

(C.A. No. 82-5284))

SUR PETITION FOR REHEARING
IN BANC

Present: ALDISERT, Chief Judge, SEITZ, ADAMS, GIBBONS, HUNTER, WEIS, GARTH, HIGGINBOTHAM, SLOVITER, BECKER and WISDOM* Circuit Judges,

The petition for rehearing in banc filed by appellant in the above-entitled case having been submitted to the judges who participated in the decision of this Court and to all the other available circuit judges of the circuit in regular active service, and no judge who concurred in the decision having asked for rehearing, and a majority of the circuit judges of the circuit in regular active service not having voted for rehearing by the Court in banc, the petition for rehearing in banc is denied.

BY THE COURT,

Circuit Judge

DATED: March 21, 1985

RECEIVED AND FILED

3-21-85

SALLY MRVOS

C

* As to panel rehearing only.

(3)

No. 84-1798

Office - Supreme Court, U.S.
FILED
JUN 24 1985
ALEXANDER L. STEVAS,
CLERK

IN THE

Supreme Court of the United States

APRIL TERM, 1985

FREDERICK L. COLLINS,
Petitioner

v.

ANNDEP STEAMSHIP CORPORATION

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

BERNARD SACKS*
SIMON W. TACHE
Assistant Counsel

Rohm & Haas Building, 2nd Floor
6th & Market Streets
Philadelphia, PA 19106
(215) 925-8200

*Counsel of Record

INSTAPRINT (215) 977-8000 1801 JFK Blvd. Phila, PA 19103

APPENDIX

NO. 84-1414

FREDERICK L. COLLINS

v. Appellant

RECEIVED AND FILED

ANNDEP STEAMSHIP CORPORATION

03/29/85

SALLY MRVOS

Clerk

On Appeal from the United States District Court
for the Eastern District of Pennsylvania
(C. A. No. 82-5284)
(Honorable John P. Fullam)

Submitted Under Third Circuit Rule 12(6)
February 25, 1985

Before: ADAMS, WEIS and WISDOM,* Circuit Judges

* Hon. John Minor Wisdom, United States Court of Appeals for the Fifth Circuit, sitting by designation.

Certified as a true copy and issued in lieu of a formal mandate on March 29, 1985.
Test: (M. Elizabeth Ferguson)
Chief Deputy Clerk, U.S. Court of

Costs taxed in favor of appellee as follows:
Brief.....$140.00

JUDGEMENT ORDER

After considering the contentions raised by ppellant it is

ADJUDGED AND ORDERED that the judgement of the istrict c rt be and is hereby affirmed.

Costs taxed against appellant.

BY THE COURT,

(Judge Adams)

Circuit Judge

ATTEST:

(Sally Mrvos)

ATED: March 4, 1985 Sally Mrvos, Clerk

UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

NO. 84-1414

FREDERICK L. COLLINS,

Appellant

v.

ANNDEP STEAMSHIP CORPORATION

(C.A. No. 82-5284)

SUR PETITION FOR REHEARING

IN BANC

Present: ALDISERT, Chief Judge, SEITZ, ADAMS, GIBBONS, HUNTER, WEIS, HIGGINBOTHAM, SLOVITER, BACKER, and WISDOM* Circuit Judges,

The petition for rehearing in banc filed by appellant in the above-entitled case having been submitted to the judges who participated in the decision of this Court and to all the other available circuit judges of the circuit in regular active service, and no judge who concurred in the decision having asked for rehearing, and a majority of the circuit judges of the circuit in regular active

service not having voted for rehearing by the Court in banc, the petition for rehearing in banc is denied.

BY THE COURT,

(Judge Adams)

DATED: March 21, 1985

(Circuit Judge)

RECEIVED AND FILED

03/21/85

SALLY MRVOS

C

IN THE UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF PENNSYLVANIA

FREDERICK L. COLLINS : CIVIL ACTION

v. :

(Filed June 29, 1984)

ANNDEP STEAMSHIP CORPORATION : NO. 82-5284

MEMORANDUM AND ORDER

FULLAM, J. JUNE 29, 1984

Seaman's action for penalty wages. Plaintiff served as a member of the crew of defendant's vessel from December 25, 1981, until discharged on March 1, 1982. The discharge was occasioned by the fact that, while on shore leave in Panama, plaintiff was arrested by Panamanian authorities on drug charges, and thus failed to rejoin the vessel before its departure.

As of March 1, 1982, there was due and owing to plaintiff a total of $876 in wages. Plaintiff remained in jail in Panama until July 14, 1982. Upon his release, defendant's Panamanian agents arranged for overnight hotel accommodations and provided plaintiff with a one-way airplane ticket for his return to the West Coast of the United States, which occurred on July 15, 1982.

Upon being informed of plaintiff's release from

ENTERED: 06/29/84

custody, the defendant's New York office sent a check for the balance of plaintiff's wages to the permanent address listed on company records (the residence of plaintiff's mother, in Florida). The payment was made on or about July 23, 1982, and was received by plaintiff in due course shortly thereafter. The issue in this case is whether it was permissible for the defendant to deduct from the wages due the cost of the airline ticket for plaintiff's repatriation, viz, the sum of $648.90.

Plaintiff testified that, upon his release from police custody, he requested payment in full of his back wages, with a view toward joining some other vessel in Panama, but was told by defendant's Panamanian agent that he would be paid when he returned to the United States, that a company representative would meet his plane in Los Angeles to settle the matter, and that his only option was to accept the arrangement for immediate return to the United States by air. At no time, according to the plaintiff, did he agree to bear the cost of the return trip, or authorize its deduction from his back wages.

Even assuming that plaintiff's recollection of these events is entirely correct, I am satisfied that the company acted properly in repatriating the plain-

trip. As between plaintiff and the defendant, the defendant had no obligation to bear the cost of plaintiff's repatriation. Moreover, the evidence makes it quite clear that the defendant had been advised by its Panamanian agents that, under Panamanian law, the defendant was required to see to it that plaintiff left the country promptly. In my view, the defendant acted reasonably in arranging for plaintiff's immediate return to the United States, and made prompt payment to the plaintiff of all sums to which he was legally entitled.

Moreover, I am not persuaded that plaintiff actually did object, at the time, to the arrangements made by the defendant. On this record, it is undisputed that plaintiff purchased a quantity of marijuana and was arrested by Panamanian police while in possession of the contraband. He was confined to Panamanian jails for four months, during which, according to plaintiff, he was subjected to rather harsh treatment. The record of his criminal trial makes clear that plaintiff's ultimate release was obtained only because his Panamanian attorney was able to convince the court that possession of marijuana was perfectly legal in plaintiff's state of residence, and that plaintiff had no idea he was violating Panamanian

would have preferred to remain in Panama seeking employment on another vessel, rather than immediately return to freedom in the United States.

For all of these reasons, judgement will be entered in favor of the defendant.

IN THE UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF PENNSYLVANIA

FREDERICK L. COLLINS	:	CIVIL ACTION
v.	:	
ANNDEP STEAMSHIP CORPORATION	:	NO. 82-5284

ORDER

AND NOW, this 29th day of June, 1984, it is ORDERED that judgement is entered in favor of the defendant.

John P. Fullam

J.

Office-Supreme Court, U.S.
FILED
JUL 1985
ALEXANDER L. STEVAS,
CLERK

No. 84-1798

IN THE
SUPREME COURT OF THE UNITED STATES

October Term, 1984

FREDERICK L. COLLINS,
Petitioner

v.

ANNDEP STEAMSHIP CORPORATION,
Respondent

On Petition For Writ Of Certiorari To The United States Court Of Appeals For The Third Circuit

BRIEF FOR ANNDEP STEAMSHIP CORPORATION IN OPPOSITION

W. Stanley Sneath
Clark, Ladner, Fortenbaugh & Young
1818 Market Street — 32nd Floor
Philadelphia, PA 19103
(215) 241-1860

PACKARD PRESS / LEGAL DIVISION, 10th & SPRING GARDEN STREETS, PHILA., PA. 19123 (215) 236-2000

QUESTIONS PRESENTED

1. Whether the defendant shipowner acted both properly and reasonably in deducting repatriation expenses from the plaintiff seaman who was arrested while attempting to smuggle a quantity of marijuana onto his ship and was jailed by Panamanian authorities, where the Panamanian authorities required the shipowner to repatriate the seaman following his release.

2. Whether the shipowner acted both properly and reasonably in not tendering a seaman's earned wages until the seaman contacted the shipowner after his release from a Panamanian jail and his repatriation to the United States.

PARTIES

Frederick L. Collins, seaman on the United States Flag steam tanker WILLIAMSBURGH, Petitioner.

Anndep Steamship Corporation, operator of the S.T. WILLIAMSBURGH, Respondent.

TABLE OF CONTENTS

	Page
Questions Presented	i
Parties	i
Table of Authorities	iii
Opinions Below	1
Jurisdiction	2
Statutes	2
Statement of the Case	2
Summary of the Argument	3
Argument	
A. Petitioner Forfeited Rights As A Consequence Of His Activities In Panama	5
B. Anndep Acted Reasonably With Respect To Collins Repatriation	7
C. Anndep Had No Duty To Seek Out Collins And Tender His Wages Before Collins Returned To The United States And Requested Payment	8
D. Common Sense Supports The Lower Court's Decision	9
Conclusion	10

TABLE OF AUTHORITIES

Cases:	Page
American Foreign Steamship Company v. Matise, 423 U.S. 150 (1975)	7
Chambers v. Moore McCormack Lines, Inc., 182 F.2d 747 (3rd Cir. 1950)	6
Denahey v. Isbrandtsen Co., 1948 A.M.C. 1487 (S.D. N.Y. 1948) 1951 A.M.C. 661 (S.D. N.Y. 1951)	8
Dick v. United States Lines, Co., 38 F. Supp. 685 (S.D. N.Y. 1941)	5
Doran v. United States, 1949 A.M.C. 1986 (E.D. Pa. 1949)	8
Escobar v. SS WASHINGTON TRADER, 640 F.2d 1063 (9th Cir. 1981) (on remand from Supreme Court, 423 U.S. 1070 (1976)	7
Griffin v. Oceanic Contractors, Inc., 458 U.S. 564 (1982)	4
Isbrandtsen Co. v. Johnson, 343 U.S. 779 (1952)	7
Pitsillos v. THE SS GEORGE, 176 F. Supp. 351 (E.D. Va. 1959)	8
Thomas v. SS SANTA MERCEDES, 572 F.2d 1331 (9th Cir. 1978)	5
Yeon Shipping Corp. v. Thomas Keys, et al, Civil Action No. 84-4866 (E.D. Pa.)	9
STATUTES:	
28 U.S.C. §1333 (1)(1976)	2
46 U.S.C.A. §10313 (West Supp. 1983)	4
46 U.S.C.A. §10501 (West Supp. 1983)	2
46 U.S.C.A. §10701 *et. seq.* (West Supp. 1983)	8
46 U.S.C.A. §11501 (West Supp. 1983)	6

No. 84-1798

IN THE
SUPREME COURT OF THE UNITED STATES

October Term, 1984

FREDERICK L. COLLINS,
Petitioner

v.

ANNDEP STEAMSHIP CORPORATION,
Respondent

On Petition For Writ Of Certiorari To The United States Court Of Appeals For The Third Circuit

BRIEF FOR ANNDEP STEAMSHIP CORPORATION IN OPPOSITION

OPINIONS BELOW

The Opinion of the United States District Court for the Eastern District of Pennsylvania is not officially reported. It has been reported at 1984 A.M.C. 2524, and is found in the Appendix hereto at A-1.

The Judgment Order of the Court of Appeals for the Third Circuit is unreported, and is found at A-1 in the petition of Collins.

JURISDICTION

Respondent acknowledges and accepts the statement of jurisdiction presented by petitioner, Collins, at page 1.

STATUTES

46 U.S.C. §10313
46 U.S.C. §10501
46 U.S.C. §10701
46 U.S.C. §11501

STATEMENT OF THE CASE

Original federal jurisdiction of this matter arises under 28 U.S.C. §1333(1).

This penalty wage action arises out of the incarceration by Panamanian authorities of the petitioner, and the events which followed. The petitioner was a steward's utility on the S.T. WILLIAMSBURGH. Petitioner was returning from shore leave in Puerto Armuelles, Panama, when he was arrested at the marine terminal gate with a quantity of marijuana. Petitioner was taken to a nearby town and incarcerated for approximately four months. His jailers took all of petitioner's money during the period of his incarceration.

Petitioner obtained the services of a local attorney, and on June 14, 1982, was released from custody. The Panamanian records of the arrest, investigation and trial of petitioner's case indicate that petitioner was released after admitting possession of marijuana, but raising the defense that possession was legal in his home state of Alaska, and that he did not know that possession was against the law in Panama.

During petitioner's incarceration, the local steamship agents retained by respondent repeatedly advised

respondent that the Panamanian Government would ultimately require petitioner to repatriate the plaintiff. Thus, when petitioner was released from jail, he was promptly put on an airplane and flown to Los Angeles, the port from which he joined the WILLIAMSBURGH. The expenses of repatriation, $648.90, were deducted from his wages, which were paid on petitioner's return to the United States.

The trial judge found, as a matter of fact, that Collins did not object to the arrangements made on his behalf. The trial judge also found that respondent acted reasonably in repatriating the petitioner and deducting the expenses thereof from his wages. Finally, the trial judge ruled, during the trial, that respondent acted reasonably in not forwarding the petitioner's wages to him while he was jailed.

Petitioner appealed from the adverse findings of the district court. The court of appeals affirmed the district court without written opinion, and subsequently denied petitioner's request for a rehearing en banc.

Petitioners filed a Petition for Certiorari to this Court. This brief in opposition follows.

SUMMARY OF ARGUMENT

The Petitioner now brings before this Court the very same arguments which have failed to impress both the district court and the court of appeals. The district court was unimpressed with the plaintiff's veracity, and the court of appeals was equally unimpressed with the plaintiff's legal arguments. The decisions below were correct and there is no need for further review by this Court.

The district court found, on the facts, that respondent acted reasonably in retaining the petitioner's wages during his incarceration in Panama, and in having the petitioner pay for the costs of his repatriation by deducting these costs from petitioner's wages. .

There are two elements to this case. The first concerns the propriety of the respondent's conduct in not actively seeking out the petitioner while he was in a Panamanian jail and tendering his wages. The law is clear that a shipowner need not seek out a seaman in order to tender him his wages. Petitioner's suggestion that such is required has no foundation in the law.

The second element involves the respondent's use of the petitioner's wages to pay for the petitioner's repatriation. Collins failed to join the WILLIAMSBURGH as a result of his arrest at the terminal gate. Consequently, he was logged "failed to join" and discharged for cause. A seaman who is discharged for cause is not entitled to repatriation at the expense of the shipowner. In this case, however, the shipowner was advised that the local authorities required it to repatriate Collins upon his release from jail. Consequently, although Anndep had the obligation to make arrangements for and insure that the petitioner was repatriated from Panama, it did not have the financial obligation to pay for this repatriation. As between the shipowner and the petitioner, petitioner had that obligation. Consequently, the district court found that the respondent acted reasonably in deducting the repatriation expenses from petitioner's wages. In other words, the shipowner had sufficient cause to withhold the petitioner's wages.

ARGUMENT

The Penalty Wage Statute, 46 U.S.C. §10313 (f through g) (formerly U.S.C.§596) permits a seaman, whose wages have not been paid, without sufficient cause for non-payment, to bring suit and collect two days wages for each day that payment is delayed. See *Griffin vs. Oceanic Contractors, Inc.*, 458 U.S. 564 (1982). In order to collect penalty wages the seaman must prove two elements. The first is that the wages were unlawfully withheld. The second is that the shipowner did not have

sufficient cause to withhold wages where the withholding was otherwise technically unlawful. In this case, the district court found as a matter of fact that the shipowner acted properly and reasonably in not tendering wages during the period when the petitioner was jailed, and also in deducting repatriation expenses from Collins' wages.

A. Petitioner Forfeited Rights As A Consequence Of His Activities in Panama

Collins was arrested while attempting to return to the WILLIAMSBURGH with a quantity of marijuana. His actions constituted an attempt to smuggle contraband onto United States flag vessel, in violation of United States and Panamanian law. His actions had two immediate consequences. First, he was arrested by Panamanian authorities and jailed for some months. Second, he was logged "failed to join" by the WILLIAMSBURGH.

Under normal circumstances, a vessel has no further responsibility to a crew member, such as Collins, who fails to return following shore leave. If, and when, the seaman ever again reports to the vessel owner and requests his back wages, if any, the shipowner is obligated to make payment, less any penalties which might have been charged as a result of the seaman's failure to join. However, a vessel owner has no duty to seek out a seaman and pay his wages. *Thomas vs. SS SANTA MERCEDES*, 572 F.2d 1331 (9th Cir. 1978).

Under United States law a shipowner owes no further duty to a seaman who fails to join his vessel in a foreign port. Where a seaman has been arrested and lodged in a jail in a foreign port for a violation of the laws of that country, on his release he is not entitled as a matter of right to repatriation at the expense of the shipowner. *Dick vs. United States Lines Co.*, 38 F.Supp. 685 (S.D.N.Y. 1941). However, Anndep's local steamship

agents repeatedly instructed Anndep that Panamanian law required the petitioner to be repatriated upon his release from jail. As a result, Anndep was forced to expend funds to repatriate Collins, as a direct result of Collins' actions in Panama. Simply put, Collins' attempt to smuggle marijuana onto the WILLIAMSBURGH forced Anndep to spend $648.90 to repatriate him. 46 U.S.C. §11501 (formerly U.S.C. §701) sets forth a series of offenses for which a seaman forfeits all or part of his wages. Subsection 8 of section 11501 reads:

> "For smuggling for which a seaman is convicted causing loss or damage to the owner or master, the seaman is liable to the owner or master for the loss or damage, and any part of the seaman's wages may be retained to satisfy the liability . . ."

The Third Circuit has held that an actual conviction is unnecessary if there can be no doubt that the seaman made an attempt at smuggling, and the vessel or her owners were put to expense as a direct result. *Chambers vs. Moore McCormack Lines, Inc.*, 182 F.2d 747 (3rd Cir. 1950). In *Chambers*, the seaman involved was not convicted of smuggling, but the vessel was put to expense as a result of the discovery of the seaman's stash of contraband. Although the petitioner suggests that the decision in this case represents a grave blow to seamen's rights, the result and rationale are identical to that found in the *Chambers* case. Consequently, there is nothing shocking or radical about the result, and review by this Court is unnecessary.

The petitioner would have the shipowner jump through every statutory hoop, regardless of whether the hoops were even there in this circumstance. The petitioner chooses to ignore the fact that the district court made a specific finding of fact that the shipowner's actions were reasonable under the circumstances. By find-

ing the shipowner's actions reasonable, the trial judge made a factual finding that the shipowner acted with sufficient cause.

B. Anndep Acted Reasonably With Respect to Collins Repatriation

It is clear in the district court's opinion that the trial judge simply did not believe the petitioner's testimony at trial. Therefore, despite the assertions made by petitioner, in his Brief, the court found that Collins made no objection to the actions taken by the shipowner with respect to his repatriation. Thus, the result here is supported by the cases of *Escobar vs. SS WASHINGTON TRADER*, 640 F.2d 1063 (9th Cir. 1981) (on remand from Supreme Court, 423 U.S. 1070 (1976)) and *American Foreign Steamship Co. vs. Matise*, 423 U.S. 150 (1975). In both of these cases, shipowners were faced with a situation where as between themselves and the seamen, they were not responsible for repatriation costs, but considerations of foreign law required the shipowner to see to it that the seaman was repatriated. In both of these cases the shipowner purchased airline tickets and made arrangements for the repatriation of the seamen, deducting the costs thereof from earned wages. As between the shipowner and the seaman, the seaman had the obligation to pay for his own repatriation out of his own funds, and not out of a repatriation allowance separate from wages. See *Isbrandtsen Co. vs. Johnson*, 343 U.S. 779 (1952). Therefore, it was clearly the responsibility of the seaman to pay for repatriation, and whether the seaman consents to have this expense paid in kind, out of his wages, or not, is irrelevant. The seaman received the full value of his wages in kind rather than in currency. He would have no more cash whether he paid directly or indirectly for his transportation home. As the Supreme Court stated in *Matise*:

> "The obvious concern of section 596 is that the shipowner not unlawfully withhold wages, and thereby unjustly enrich himself while wrongfully denying the seaman the benefits of his labor."

423 U.S. 150, 159. Even if Collins did not affirmatively consent to his repatriation by Anndep, it is clear from the court's finding that he did not object, and the failure to obtain explicit consent, if such failure in fact occurred, should not be considered such a distinct difference from *Matise* and *Escabar* to warrant a different result.

C. Anndep Had No Duty To Seek Out Collins And Tender His Wages Before Collins Returned To The United States And Requested Payment

Anndep was not under any duty to find out what jail Collins was in and tender his back wages. It was not Anndep's fault that Collins was jailed. Collins was jailed as a result of his own misconduct, and neither law nor equity made Anndep responsible to him while he was in prison.

> "To require shipping companies to search out seamen to pay accrued wages is an unrealistic burden, one we refuse to impose. It is more reasonable to expect seamen to present themselves and their vouchers for payment."

Thomas vs. SANTA MERCEDES, 572 F.2d 1331, 1335 (9th Cir. 1979). See *Doran vs. United States*, 1949 A.M.C. 1986 (E.D. Pa. 1949); *Denahey vs. Isbrandtsen Co.*, 1948 A.M.C. 1487 (S.D.N.Y. 1948), 1951 A.M.C. 661 (S.D.N.Y. 1951); *Pitsillos vs. THE SS GEORGE*, 176 F.Supp. 351 (E.D. Va. 1959).

The petitioner suggests that his wages should have been turned over to the United States Consul in Panama. While such may be required for deceased seamen (46 U.S.C. §10701 et seq.), there is no statutory provision for such with respect to incarcerated seamen. In all likelihood, if Anndep had turned over petitioner's wages to a

consular official in Panama, petitioner would have contended that this action was unlawful, and demanded penalty wages for this "breach" of the shipowner's obligation. The result reached is not only logical, but it is supported by *Escobar vs. SS WASHINGTON TRADER, supra*. In *Escobar*, the Ninth Circuit held that the duty to pay wages would not begin to run until the seaman was discharged from a hospital in which he had landed as a result of his own misconduct, and had presented himself to demand his wages from the shipowner. *Escobar, supra*, at 1064, N.3. Consequently, the shipowner's actions are fully supported by existing law, and there is no reason for Supreme Court review in this case.

D. Common Sense Supports The Lower Court's Decision

Petitioner forecasts dire consequences for seamen if this case is not reversed. A careful examination of the case, shows that it breaks little, if any, new ground. The decision of the district court, as affirmed by the court of appeals, is supported by numerous other decisions, as well as by common sense. The suggestion that this decision will lead to gross abuses of seamen's rights is patently unfounded.[1]

It is obvious that the *Collins* decision does not reduce "sufficient cause" to "any cause." Nor does it confuse the concept of sufficient cause with the discharge of a seaman for cause. It is plain that the trial judge examined the situation in its totality, and determined that the shipowner acted with sufficient cause in this case.

The obligation to pay a seaman's wages is a heavy one, but the petitioner would allow a shipowner abso-

1. The cases to which the petitioner is apparently referring to in his footnote on page 7 of Petitioner's Petition involve seamen who were discharged after an unprovoked violent armed assault on ship's officers. The shipowner paid the seamen their full back wages and repatriation expenses, and has filed suit to recover the costs occasioned by the seamens' misconduct. See *Yeon Shipping Co. v. Thomas Keys, et al.* Civil Action No. 84-4866 E.D. Pa.

lutely no flexibility to deal with the demands of a given situation. It is clear that the respondent acted properly under the circumstances and the result below was a proper and just outcome.

Petitioner points out at pages 4 and 5 of his brief that sailors are a protected class whose role is indispensable to the national defense. Sailors are the lifeline of our international communications. However, Petitioner's role in this sad episode was obviously not indispensable. While the law rightly treats sailors as wards of the admiralty because of past abuses they have suffered, the law should not provide a license to sailors to act as irresponsably as Petitioner has acted. The Penalty Wage Statute has, as its salutary purpose, the requirement that shipowners act reasonably in promptly paying seamen and not benefit by withholding wages. Such purpose would not at all be enhanced here by overruling the trial judge's finding that the shipowner acted reasonably. A common sense view of the facts demonstrates the wisdom of the court's finding. The Penalty Wage Statute should not be distorted from accomplishing its main purpose by being applied to situations where vessel owners act reasonably to help seamen, and are not unjustly enriched.

Conclusion

The district court's legal and factual findings are correct. The court of appeal's affirmance is proper. There is no need for Supreme Court review of this case.

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

FREDERICK L. COLLINS	:	CIVIL ACTION
v.	:	
ANNDEP STEAMSHIP CORPORATION	:	NO. 82-5284

MEMORANDUM AND ORDER

FULLAM, J. JUNE 29, 1984

Seamen's action for penalty wages. Plaintiff served as a member of the crew of defendant's vessel from December 25, 1981 until discharged on March 1, 1982. The discharge was occasioned by the fact that, while on shore leave in Panama, plaintiff was arrested by Panamanian authorities on drug charges, and thus failed to rejoin the vessel before its departure.

As of March 1, 1982, there was due and owing to plaintiff a total of $876 in wages. Plaintiff remained in jail in Panama until July 14, 1982. Upon his release, defendant's Panamanian agents arranged for overnight hotel accommodations and provided plaintiff with a one-way airplane ticket for his return to the West Coast of the United States, which occurred on July 15, 1982.

Upon being informed of plaintiff's release from custody, the defendant's New York office sent a check for the balance of plaintiff's wages to the permanent address listed on company records (the residence of plaintiff's mother, in Florida). The payment was made on or about July 23, 1982, and was received by plaintiff in due course shortly thereafter. The issue in this case is whether it was permissible for the defendant to deduct from the wages due the cost of the airline ticket for plaintiff's repatriation, *viz.*, the sum of $648.90.

Plaintiff testified that, upon his release from police custody, he requested payment in full of his back wages, with a view toward joining some other vessel in Panama, but was told by defendant's Panamanian agent that he

would be paid when he returned to the United States, that a company representative would meet his plane in Los Angeles to settle the matter, and that his only option was to accept the arrangement for immediate return to the United States by air. At no time, according to the plaintiff, did he agree to bear the cost of the return trip, or authorize its deduction from his back wages

Even assuming that plaintiff's recollection of these events is entirely correct, I am satisfied that the company acted properly in repatriating the plaintiff and in charging him with the cost of the return trip. As between plaintiff and the defendant, the defendant had no obligation to bear the cost of plaintiff's repatriation. Moreover, the evidence makes it quite clear that the defendant had been advised by its Panamanian agents that, under Panamanian law, the defendant was required to see to it that plaintiff left the country promptly. In my view, the defendant acted reasonably in arranging for plaintiff's immediate return to the United States, and made prompt payment to the plaintiff of all sums to which he was legally entitled.

Moreover, I am not persuaded that plaintiff actually did object, at the time, to the arrangements made by the defendant. On this record, it is undisputed that plaintiff purchased a quantity of marijuana and was arrested by Panamanian police while in possession of the contraband. He was confined to Panamanian jails for four months, during which, according to plaintiff, he was subjected to rather harsh treatment. The record of his criminal trial makes clear that plaintiff's ultimate release was obtained only because his Panamanian attorney was able to convince the court that possession of marijuana was perfectly legal in plaintiff's state of residence, and that plaintiff had no idea he was violating Panamanian law. I think it highly unlikely that plaintiff really would have preferred to remain in Panama seeking employment on another vessel, rather than immediately return to freedom in the United States.

For all of these reasons, judgment will be entered in favor of the defendant.

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

FREDERICK L. COLLINS	:	CIVIL ACTION
v.	:	
ANNDEP STEAMSHIP CORPORATION	:	NO. 82-5284

ORDER

AND NOW, this 29th day of June, 1984, it is ORDERED that judgment is entered in favor of the defendant.

_____

J.